

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON**

**UNITED STATES OF AMERICA,**

**Plaintiff**

**v.**

**SHELL PIPELINE COMPANY LP fka  
EQUILON PIPELINE COMPANY LLC  
and OLYMPIC PIPE LINE COMPANY,**

**Defendants.**

**Civil Action No. CV02-1178R**

**CONSENT DECREE BETWEEN THE  
UNITED STATES OF AMERICA AND  
SHELL PIPELINE COMPANY LP  
fka EQUILON PIPELINE COMPANY LLC**

**I. BACKGROUND**

A. Plaintiff, the United States of America (United States), through the Attorney General, at the request of the Administrator of the United States Environmental Protection Agency (EPA), filed a civil complaint (Complaint) against Shell Pipeline Company LP, fka Equilon Pipeline Company LLC (Shell), pursuant to the Clean Water Act (CWA), 33 U.S.C. §§ 1251-1387, seeking civil penalties for the discharge of gasoline into or upon navigable waters of the United States or adjoining shorelines. The Complaint alleges that Shell is liable for the discharge of gasoline into Hanna and Whatcom Creeks, navigable waters of the United

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1 States, and their adjoining shorelines, beginning on June 10, 1999, in violation of  
2 Sections 301(a) and 311(b)(3) of the CWA, 33 U.S.C. §§ 1311(a) and 1321(b)(3).

3 B. The State of Washington (State), through its Attorney General, at the request of  
4 the Washington Department of Ecology, served a Notice of Penalty (Notice)  
5 against Shell, seeking civil penalties pursuant to Wash. Rev. Code Chapters 90.48  
6 and 90.56. The Notice alleges that Shell is liable for the discharge of gasoline  
7 into ground and surface waters of the State, including Whatcom and Hannah  
8 Creeks, beginning on June 10, 1999, in violation of Wash. Rev. Code  
9 Chapters 90.48 and 90.56.

10 C. The Parties agree that it is desirable to resolve these matters without resort to  
11 litigation.

12 D. Shell has entered into this Consent Decree solely for the purposes of settlement  
13 and compromise of disputed claims. By entering into this Consent Decree, Shell  
14 does not admit any, and hereby denies all, of the factual allegations or legal  
15 claims in the Complaint except as otherwise specified in Section II (Jurisdiction  
16 and Venue) of this Consent Decree, nor does Shell admit any, and hereby denies  
17 all, liability to the United States or any third party arising out of the Incident (as  
18 that term is defined herein) or out of the transactions or occurrences alleged in the  
19 Complaint. This Decree may not be used in any civil proceeding of any type as  
20 evidence or proof of any fact or as evidence of the violation of any law, rule,  
21 regulation, or Court decision, except in a proceeding to enforce this Consent  
22 Decree.

23 E. Cooperative negotiation efforts of the United States, the State, and Shell resulted  
24 in settlements resolving Shell's civil liability both to the United States pursuant to

1 the CWA and to the State pursuant to Wash. Rev. Code Chapters 90.48  
2 and 90.56.

3 F. To resolve Shell's civil liability for the claims asserted in the Complaint, Shell  
4 will pay a civil penalty of \$5 million to the United States, comply with the other  
5 relief in Appendix A, and satisfy all other terms of this Consent Decree.

6 G. To resolve civil penalty liability to the State pursuant to Wash. Rev. Code  
7 Chapters 90.48 and 90.56, Shell will enter into a settlement agreement with the  
8 State (State Agreement) requiring Shell to pay a total of \$5 million in civil  
9 penalties to the State which may include, in whole or in part, expenditures agreed  
10 to by the State and Shell.

11 H. The Parties agree, and this Court by entering this Consent Decree finds, that this  
12 Consent Decree and these civil penalties address only the allegations and claims  
13 against Shell related to the Incident and not any allegations and claims against  
14 any other person or entity.

15 I. The Parties agree, and this Court by entering this Consent Decree finds, that the  
16 Parties have negotiated this Consent Decree in good faith, that settlement of this  
17 matter will avoid further litigation between the Parties related to the claims in the  
18 Complaint, and that the settlement embodied by this Consent Decree is fair,  
19 reasonable, and in the public interest.

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22 THEREFORE, with the consent of the Parties to this Consent Decree, it is ORDERED,  
23 ADJUDGED AND DECREED:

24 **II. JURISDICTION AND VENUE**

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1. This Court has jurisdiction over the subject matter of this action and the Parties pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 33 U.S.C. §§ 1319(b), 1321(b)(7)(E).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b), 1395(a), and 33 U.S.C. §§ 1319(b), 1321(b)(7)(E).
3. For the purposes of this Consent Decree and the underlying claims of the United States, Shell waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Shell consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

### **III. DEFINITIONS**

4. Whenever terms listed below are used in this Consent Decree or Appendix A, the following definitions shall apply:
- a. "Affiliate" shall mean a person or entity directly, or indirectly through one or more intermediaries, in control of, or controlled by, or under common control with another entity. For the purposes of this Consent Decree, an entity that results from a name change by Shell or merger by Shell with another entity during the pendency of this Decree shall be considered an Affiliate.
- b. "Appendix A" or "Appendix" shall mean Appendix A (Other Relief) attached to this Consent Decree, and all Exhibits attached to Appendix A.
- c. "Chase Pipeline System" shall mean those elements of the Shell Pipeline Systems known as the Chase Kansas Products Pipeline and the Chase Colorado Products Pipeline, including approximately 731 miles of pipeline running in the states of Kansas and Colorado.
- d. "Complaint" shall mean the Complaint filed by the United States in this case.

- 1 e. "Consent Decree" or "Decree" shall mean this document and the Appendix, and  
2 any modifications of this document or Appendix in accordance with  
3 Section XVIII (Modifications) of this document. In the event of conflict between  
4 this document and the Appendix, this document shall control.
- 5 f. "CWA" shall mean the Clean Water Act (CWA), 33 U.S.C. §§ 1251-1387.
- 6 g. "Day" shall mean a calendar day unless expressly stated to be a working day.  
7 "Working Day" shall mean a day other than a Saturday, Sunday, or Federal  
8 holiday. In computing any period of time pursuant to this Consent Decree, where  
9 the last Day would fall on a Saturday, Sunday, or Federal holiday, the period shall  
10 run until the close of business of the next Working Day.
- 11 h. "DOJ" shall mean the United States Department of Justice.
- 12 i. "EPA" shall mean the United States Environmental Protection Agency and any  
13 successor departments or agencies.
- 14 j. "Engineering Judgment" shall mean judgment based on the application of  
15 scientific and mathematical principles to the design, construction, operation, and  
16 maintenance of pipeline systems, with such judgment exercised by a suitably  
17 qualified person.
- 18 k. "Incident" shall mean the discharge of gasoline into or upon Whatcom and Hanna  
19 Creeks and their adjoining shorelines in Bellingham, Washington, beginning on  
20 June 10, 1999, as described with particularity in the Complaint filed by the  
21 United States in this case.
- 22 l. "Independent Monitoring Contractor" shall mean the independent monitoring  
23 contractor selected pursuant to Section XIV of the Appendix.
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- 1 m. "National Pipeline Mapping System" shall mean the National Pipeline Mapping  
2 System referred to in 49 C.F.R. § 195.452, Appendix C, § I.A.
- 3 n. "OPA" shall mean the Oil Pollution Act of 1990 (OPA), 33 U.S.C. §§ 2701-2761.
- 4 o. "Other Relief" shall mean the other relief described in Section VII (Other Relief)  
5 and Appendix A.
- 6 p. "Paragraph" shall mean a portion of this Consent Decree or Appendix A  
7 identified by an Arabic numeral.
- 8 q. "Parallel Criminal Proceedings" shall mean the criminal proceedings initiated in  
9 this Court under the caption: *United States of America v. Olympic Pipe Line*  
10 *Company*, et al., No. CR01-338, and any subsequent related proceedings.
- 11 r. "Parties" shall mean the United States and Shell. Olympic Pipe Line Company is  
12 not a party to this Decree.
- 13 s. "PSA" shall mean the Pipeline Safety Act, 49 U.S.C. Chapter 601.
- 14 t. "RCRA" shall mean the Solid Waste Disposal Act as amended by the Resource  
15 Conservation and Recovery Act, 42 U.S.C. §§ 6921-6992.
- 16 u. "Responsible Corporate Official" shall mean the person or persons designated by  
17 Shell to perform relevant decision-making functions, and who has authority to  
18 sign documents on behalf of Shell with respect to the Decree.
- 19 v. "Section" shall mean a portion of this Consent Decree identified by a capitalized  
20 Roman numeral.
- 21 w. "Semester" shall mean either the period from January 1 through June 30 of any  
22 calendar year, or the period from July 1 through December 31 of any calendar  
23 year.
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- 1           x.       “Shell” shall mean Shell Pipeline Company LP, fka Equilon Pipeline Company  
2                    LLC, one of the defendants in this action, and its officers, employees, Affiliates,  
3                    successors and assigns. For the purpose of this definition, a purchaser of assets  
4                    shall not be considered a successor or assign.
- 5           y.       “Shell Pipeline Systems” shall mean the pipeline systems commonly referred to  
6                    as the East Line Products, North Line Products, Chase Kansas Products, Chase  
7                    Colorado Products, and Orion Products pipeline systems that are used for  
8                    transporting petroleum products, and include approximately 2139 miles of  
9                    pipeline running in the States of Texas, Oklahoma, Colorado, Kansas, Ohio,  
10                  Illinois, and Indiana and associated structures and buildings used for operations  
11                  and administration, control equipment, pumps, valves, breakout storage tanks,  
12                  and other equipment used in the operation of the pipeline systems, and any like  
13                  associated equipment added to the Shell Pipeline Systems during the pendency of  
14                  this Consent Decree. The term does not include marine terminals or facilities  
15                  such as refineries, lube plants, and marine and distribution terminals, that are  
16                  connected to, or associated with the pipelines but which perform separate  
17                  functions such as storage or blending.
- 18          z.       “State” shall mean the State of Washington.
- 19          aa.       “State Agreement” shall mean all documents constituting or describing the  
20                    agreement between Shell and the State resolving the State’s civil penalty claims  
21                    pursuant to Wash. Rev. Code Chapters 90.48 and 90.56 against Shell related to  
22                    the Incident.
- 23          bb.       “Submit” shall mean any of the following: (1) place in certified mail in a  
24                    properly addressed envelope with sufficient postage for first class delivery; (2)

tender to an overnight courier in a properly addressed envelope, and prepay the delivery fees; or (3) hand deliver and obtain signature of recipient.

cc. "Subparagraph" shall mean a portion of this Consent Decree and Appendix A identified by an upper or lower case letter, except that a portion of the Appendix identified by an uppercase letter shall be designated as a Subsection.

dd. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

#### **IV. PARTIES BOUND**

5. This Consent Decree applies to and is binding on Shell except as otherwise provided in this Paragraph. If Shell transfers ownership of any portion of the Shell Pipeline Systems, Shell nevertheless shall fulfill all requirements of this Consent Decree regarding the portions of the Shell Pipeline Systems that Shell continues to operate for as long as Shell continues to operate those portions. If Shell transfers any portion of the Chase Pipeline System to any other entity, Shell nevertheless shall fulfill all requirements of this Consent Decree for the portion of the Chase Pipeline System so transferred, with the exception of record retention requirements under Section XVI of this Decree.

#### **V. GENERAL PROVISIONS**

6. Compliance with Applicable Law. This Consent Decree in no way affects or relieves Shell of its responsibility to comply with applicable federal, state, and local laws, regulations, and permits. Shell shall perform all work required by this Consent Decree in compliance with the requirements of all applicable federal, state, and local laws, regulations, and permits. Except as expressly provided herein, compliance with this Consent Decree shall be no defense to any actions commenced pursuant to federal, state,



and local laws, regulations, and permits. This Consent Decree is not, and shall not be construed as, a permit issued pursuant to any federal, state, or local statute or regulation.

7. Construction for Purposes of Parallel Criminal Proceedings. For the purposes of the Parallel Criminal Proceedings only, Shell shall be deemed to be in compliance with this Consent Decree if Shell has paid all civil penalties and stipulated penalties, when and if required pursuant to this Decree, and is making a reasonable and diligent good faith effort to comply with all requirements of this Decree.

8. Permits. Shell shall submit timely and complete applications for, and otherwise diligently seek to obtain, any and all permits or approvals from federal, state, or other governmental entities necessary to perform work that this Consent Decree requires.

#### **VI. PAYMENT OF CIVIL PENALTIES**

9. Within 45 Days of entry of this Consent Decree, Shell shall pay the United States a civil penalty of \$5,000,000.

10. Shell shall make the payment described in the preceding Paragraph in the manner specified in Section XI (Payment and Related Matters) of this Consent Decree.

11. If the civil penalty required by Paragraph 9 is not paid within 45 Days after entry of the Consent Decree, Shell shall pay stipulated penalties in accordance with Section X (Stipulated Penalties), and interest in accordance with Section XI (Payment and Related Matters).

#### **VII. OTHER RELIEF**

12. Shell shall perform the Other Relief described in, and in accordance with the requirements contained or referenced in, Appendix A.

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**VIII. REPORTING REQUIREMENTS**

13. Semiannual Progress Reports. Beginning on the Effective Date of this Decree and through and including the Semester in which this Consent Decree is terminated pursuant to Section XXII (Termination Date), Shell shall submit certified Semiannual Progress Reports to EPA and the Independent Monitoring Contractor. The first Semiannual Progress Report shall be due within 45 Days of the close of the first Semester ending more than 90 Days after entry of this Consent Decree, with subsequent reports due within 30 Days of the close of each Semester thereafter. Additionally, if requested by EPA, Shell shall meet with EPA at a reasonable location after reasonable notice, to discuss Shell's compliance with the terms of this Decree. Each Semiannual Progress Report shall include all information required by Section XV of the Appendix.

14. Certifications. Whenever this Consent Decree or Appendix A requires Shell to certify a report or any other submission of information, Shell shall submit the following written statement with the submission, signed by a Responsible Corporate Official:

I certify under penalty of law that this submission was prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. I further certify under penalty of law that, to the best of my knowledge, based on my reasonable inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

**IX. SITE ACCESS**

15. From the date of entry of this Consent Decree until its termination date as described in Section XXII (Termination), Shell agrees to provide EPA and its authorized

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representatives, including contractors, prompt access at all reasonable times to the Shell Pipeline Systems and all property on which the Shell Pipeline Systems are located for the purposes of assessing, monitoring, or verifying compliance with the terms of this Consent Decree, and verifying any data or information submitted by Shell pursuant to this Consent Decree.

16. Notwithstanding any provisions of this Consent Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, pursuant to the CWA and any other applicable statutes or regulations.

**X. STIPULATED PENALTIES**

17. Shell shall be liable to the United States for stipulated penalties in the amounts set forth in Paragraphs 18 and 19 for failure to comply with the requirements of this Consent Decree, unless excused pursuant to Section XII (*Force Majeure*). “Noncompliance” by Shell shall include failure to complete the requirements of this Consent Decree within the time allowed in the Decree in accordance with all applicable requirements of law.

18. The following stipulated penalties shall accrue per violation per Day for any noncompliance identified in Subparagraphs a-b below:

<u>Penalty Per Noncompliance</u>	<u>Period of Noncompliance</u>
\$500 per Day or portion thereof	1st through 15th Day
\$1,250 per Day or portion thereof	16th through 30th Day
\$2,500 per Day or portion thereof	31st Day and beyond

- a. Failure to timely pay civil penalties in accordance with the terms of Section VI (Payment of Civil Penalties).
- b. Failure to comply with the requirements in the Appendix other than reporting requirements.

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19. The following stipulated penalties shall accrue per violation per Day for any failure to comply with the reporting requirements specified in Section VIII (Reporting Requirements) and in the Appendix:

<u>Penalty Per Noncompliance</u>	<u>Period of Noncompliance</u>
\$250 per Day or portion thereof	1st through 15th Day
\$500 per Day or portion thereof	16th through 30th Day
\$1,250 per Day or portion thereof	31st Day and beyond

20. All stipulated penalties shall begin to accrue on the Day after complete performance is due or the Day a violation occurs, and shall continue to accrue through the final Day of the correction of the noncompliance or completion of the activity except as otherwise provided in this Paragraph. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

a. If Shell demonstrates that, based on exercise of reasonable Engineering Judgment, after diligent inquiry, Shell believed it fully complied with a requirement of this Decree, stipulated penalties for any violation of this Decree shall begin to accrue on the Day that Shell receives notice from EPA of such violation and shall continue to accrue through the final Day of the correction of the noncompliance or completion of the activity.

b. All stipulated penalties for violations of Paragraphs 18 through 25 of the Appendix shall begin to accrue on the date that a preliminary Notice of Dispute, issued pursuant to Paragraph 26 of the Appendix, becomes final or, if Shell files with the Court a petition to resolve the dispute within the time required by Paragraph 26 of the Appendix and the United States prevails in whole or in part,

on the date of the District Court's decision, and shall continue to accrue through the final Day of the correction of the noncompliance or completion of the activity.

21. If EPA determines that Shell has failed to comply with a requirement of this Consent Decree, EPA may give Shell written notification of the same and describe the noncompliance. EPA may send Shell a written demand for the payment of penalties. Stipulated penalties shall accrue as provided in Paragraph 20 of this Consent Decree. Shell shall pay the stipulated penalties specified in EPA's written demand within 30 Days from the date of EPA's demand for payment unless:
- a. Shell has submitted a written request for discretionary waiver of stipulated penalties pursuant to Paragraph 25 of this Consent Decree and EPA has not responded to the written request;
  - b. Shell has submitted to EPA pursuant to Paragraph 31 of this Consent Decree a written claim that a delay in compliance is caused by a *force majeure* event regarding which EPA has not issued a decision pursuant to Paragraph 32 of this Consent Decree; or
  - c. Shell has submitted to EPA a written Notice of Dispute pursuant to Paragraph 35 of this Consent Decree, in which case the date that payment of any stipulated penalties is due shall be governed by Paragraph 22 of this Consent Decree.

22. Penalties shall continue to accrue, as provided in Paragraph 20 of this Consent Decree, during any dispute resolution period, but need not be paid until the following:

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- 1 a. If the dispute is resolved by agreement or by a decision of EPA that is not  
2 appealed to the Court, accrued penalties determined to be owing shall be paid to  
3 EPA within 20 Days of the date of the agreement or EPA's decision;
- 4 b. If the dispute is appealed to the Court, and the United States prevails in whole or  
5 in part, Shell shall pay all accrued penalties determined by the Court to be owed  
6 to EPA within 60 Days of the date of the Court's decision or order, except as  
7 provided in Subparagraph c below;
- 8 c. If the District Court's decision is appealed by either Party, Shell shall pay all  
9 accrued penalties determined by the District Court to be owing to the United  
10 States into an interest-bearing escrow account within 60 Days of the date of the  
11 Court's decision or order. Penalties shall be paid into this account as they  
12 continue to accrue, at least every 30 Days. Within 20 Days of the date of the  
13 issuance of the mandate by the Court of Appeals, the escrow agent shall pay the  
14 balance of the account to EPA or to Shell to the extent that they prevail.

15 23. The payment of stipulated penalties shall not affect Shell's obligation to satisfy all of the  
16 requirements of this Consent Decree.

17 24. Subject to the provisions of Section XIV of this Consent Decree (Effect of  
18 Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent  
19 Decree shall be in addition to any other non-monetary rights, remedies, or sanctions  
20 available to the United States for Shell's violation of this Consent Decree or any rights,  
21 remedies, penalties, or sanctions for Shell's violation of applicable law. If a violation of  
22 this Consent Decree also is a violation of the Clean Water Act, Shell shall be allowed a  
23 credit, for any stipulated penalties paid, against any statutory penalties imposed for such  
24 violation.

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25. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree.

**XI. PAYMENT AND RELATED MATTERS**

26. Shell shall make the payments described in Section VI (Payment of Civil Penalties) by Fedwire Electronic Funds Transfer (EFT) to the United States Department of Justice, in accordance with current EFT procedures and instructions provided to Shell by the Office of the United States Attorney for the Western District of Washington. The payments shall reference the Civil Action Number assigned to this case and DOJ Number 90-5-1-1-06967, and shall specify that the payments are made toward CWA civil penalties to be deposited into the Oil Spill Liability Trust Fund pursuant to 31 U.S.C. § 1321(s), § 4304 of Pub. L. No. 101-380, and 26 U.S.C. § 9509(b)(8). Any funds received after 11:00 a.m. Eastern Time shall be credited on the next Working Day. Shell shall submit to the United States, as provided in Section XV (Notices and Submissions), notice of all payments made pursuant to this Paragraph within 10 Days of the date of the payment.

27. Shell shall make the payments described in Section X (Stipulated Penalties) by EFT to the United States Department of Justice, in accordance with current EFT procedures and instructions provided to Shell by the Office of the United States Attorney for the Western District of Washington. The payments shall reference the Civil Action Number assigned to this case and DOJ Number 90-5-1-1-06967, and shall specify that the payments are for stipulated penalties to be deposited into the United States Treasury pursuant to 31 U.S.C. § 3302. Any funds received after 11:00 a.m. Eastern Time shall be credited on the next Working Day. Shell shall submit to the United States, as provided in Section XV

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(Notices and Submissions), notice of all payments made pursuant to this Paragraph within 10 Days of the date of the payment.

28. If Shell fails to timely make any payment required pursuant to Section VI (Payment of Civil Penalties) or Section X (Stipulated Penalties), then, commencing on the Day after payment is due, Shell shall be liable to the United States for interest on the unpaid balance at the composite prime rate computed by, and published in the Wall Street Journal on the date that payment was due, and any costs of enforcement and collection incurred pursuant to the Federal Debt Collection Procedure Act, 28 U.S.C. § 3001 *et seq.*

29. The United States shall be deemed a judgment creditor for purposes of collection of any penalties, interest, and expenses of enforcement and collection pursuant to this Consent Decree. Shell specifically acknowledges that, pursuant to 26 U.S.C. § 162(f), penalty payments made pursuant to Sections VI (Payment of Civil Penalties) and X (Stipulated Penalties) of this Consent Decree shall not be deductible for federal tax purposes.

## **XII. FORCE MAJEURE**

30. Shell's obligation to comply with the requirements of this Decree shall only be deferred to the extent and for the duration that the delay is caused by *force majeure*. "*Force majeure*," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Shell, or of any entity controlled by Shell, that delays or prevents the performance of any obligation pursuant to this Consent Decree despite Shell's best efforts to fulfill the obligation. The requirement that Shell exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to anticipate and address the effects of any potential force majeure event (1) as it is occurring; and (2) following the potential force majeure event, such that any delay is avoided or minimized to the greatest extent practicable.



1 “*Force Majeure*” does not include financial inability to perform an obligation required by  
2 this Consent Decree or the Appendix. Notwithstanding any other provision of this  
3 Consent Decree, *force majeure* is not, except as otherwise provided by law, a defense to  
4 compliance with obligations imposed pursuant to the Clean Water Act, or any other  
5 statute, regulation, or permit.

6 31. Within 7 Days of any event that may delay the performance of any obligation pursuant to  
7 this Consent Decree, whether or not caused by a *force majeure* event, Shell shall provide  
8 a written notice to EPA explaining the reasons for the delay, the anticipated duration of  
9 the delay, all actions taken or planned to prevent or minimize the delay, a proposed  
10 schedule for implementation of any measures planned to prevent or mitigate the delay or  
11 the effect of the delay, and Shell’s rationale for attributing such delay to a *force majeure*  
12 event if Shell intends to assert such a claim. If Shell is claiming a *force majeure* cause,  
13 the notice specifically shall reference this Section of the Consent Decree. Shell shall  
14 include with any notice all available documentation supporting its claim that the delay  
15 was attributable to a *force majeure* event. Failure to comply with the above requirements  
16 shall preclude Shell from asserting any claim of *force majeure* for that event. Shell shall  
17 be deemed to know of any circumstance of which Shell, or any entity controlled by Shell,  
18 knew or should have known.

19 32. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event,  
20 EPA will extend the time for performance of the obligations pursuant to this Consent  
21 Decree that are affected by the *force majeure* event for such time as EPA deems  
22 necessary to complete those obligations. An extension of the time for performance of the  
23 obligations affected by the *force majeure* event shall not, of itself, extend the time for  
24 performance of any other obligation. Within 14 Days after receiving a written *force*

1 *majeure* claim from Shell pursuant to the preceding Paragraph, EPA will exercise best  
2 efforts to notify Shell in writing of (1) EPA's decision regarding Shell's *force majeure*  
3 claim; (2) the amount of any demand for the payment of stipulated penalties related to  
4 any rejected *force majeure* claim; and (3) the length of the extension, if any, for  
5 performance of the obligations affected by the *force majeure* event; provided, however,  
6 that any delay by EPA in notifying Shell of EPA's decision regarding a *force majeure*  
7 claim does not excuse Shell's noncompliance based on an event that is not *force majeure*.  
8 Any extension of time pursuant to this Section shall not be valid unless the extension of  
9 time is confirmed in writing as provided in this Paragraph. Stipulated penalties shall not  
10 apply to a delay resulting from a *force majeure* event, as determined by EPA or the  
11 Court.

- 12 33. The dispute resolution procedures in Section XIII (Dispute Resolution) shall apply to any  
13 dispute regarding EPA's decision regarding a *force majeure* claim that Shell asserts  
14 pursuant to Paragraph 31 of this Consent Decree. If Shell elects to invoke the dispute  
15 resolution procedures set forth in Section XIII (Dispute Resolution), Shell shall do so no  
16 later than 15 Days from the date of EPA's written decision regarding a *force majeure*  
17 claim pursuant to Paragraph 32 of this Consent Decree. In any proceeding, Shell shall  
18 have the burden of proving that the delay or anticipated delay has been or will be caused  
19 by a *force majeure* event, that the duration of the delay or the extension sought was or  
20 will be warranted under the circumstances, that best efforts were exercised to avoid and  
21 mitigate the effects of the delay, and that Shell complied with the requirements of  
22 Paragraphs 30 and 31, above. If EPA or the Court determines that a violation was caused  
23 by a *force majeure* event, then Shell shall be excused from that violation, including  
24

1 stipulated penalties for that violation, but only for the period of time the violation  
2 continues because of circumstances that qualify as *force majeure*.

3 **XIII. DISPUTE RESOLUTION**

4 34. Except as otherwise provided in this Paragraph or in Paragraph 26 of the Appendix, the  
5 dispute resolution procedures of this Section shall be the exclusive mechanism for Shell  
6 to resolve disputes arising under or with respect to this Consent Decree. Once Shell  
7 submits a Notice of Dispute to EPA pursuant to Paragraph 35 of this Decree, the dispute  
8 resolution procedures of this Section shall govern the resolution of the dispute. If Shell  
9 has not invoked the dispute resolution procedures of this Section, however, the United  
10 States may invoke either the dispute resolution procedures of this Section or any other  
11 available procedure to resolve any issue related to Shell's compliance with this Consent  
12 Decree.

13 35. Any dispute that arises under, or with respect to, this Consent Decree shall in the first  
14 instance be the subject of good faith, informal negotiations between EPA and Shell and,  
15 if either of the parties requests, in consultation with the Independent Monitoring  
16 Contractor. The period for informal negotiations shall not exceed 21 Days from the time  
17 the dispute arises, unless extended by written agreement of EPA and Shell. The dispute  
18 shall be considered to have arisen when one party sends the other party a written Notice  
19 of Dispute. EPA, in its unreviewable discretion, may agree in writing to suspend accrual  
20 of stipulated penalties for a specified time period to facilitate negotiations pursuant to  
21 this Paragraph.

22 36. If informal negotiations do not resolve the dispute, EPA's position shall control unless  
23 Shell files with the Court a petition to resolve the dispute within 10 Working Days after  
24 the conclusion of the informal negotiation period. This 10 Working Day period may be

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1 extended by written agreement of the Parties to the dispute. Within 30 Days after  
2 receiving a petition filed with the Court pursuant to this Paragraph, EPA may file a  
3 response. During the Court proceeding, Shell shall have the burden of proving that  
4 Shell's proposed resolution of the issues in dispute better meets the requirements of this  
5 Consent Decree and the CWA.

6 37. The invocation of dispute resolution procedures pursuant to this Section shall not extend,  
7 postpone or affect in any way any obligation of Shell pursuant to this Consent Decree,  
8 not directly in dispute, unless EPA agrees or the Court determines otherwise. Unless  
9 waived pursuant to Paragraph 25 of this Decree or suspended pursuant to Paragraph 35 of  
10 this Decree, stipulated penalties with respect to the disputed matter shall continue to  
11 accrue as provided in Paragraph 20 of this Decree, but payment shall be stayed pending  
12 resolution of the dispute as provided in Paragraph 22 of this Decree. If Shell does not  
13 prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided  
14 in Section X (Stipulated Penalties).

15 **XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

16 38. Performance of all of Shell's obligations pursuant to this Consent Decree, and Shell's  
17 obligations pursuant to the State Agreement discussed in Subparagraph I.G of this  
18 Consent Decree resolves any civil claims of the United States against Shell:

- 19 a. pursuant to Sections 301, 309, and 311 of the CWA, 33 U.S.C. §§ 1311, 1319,  
20 and 1321, as specifically alleged in the Complaint;
- 21 b. arising from the Incident for civil penalties pursuant to Section 3008(a) of RCRA,  
22 42 U.S.C. § 6928(a), for violations of Section 3004 of RCRA, 42 U.S.C. § 6924,  
23 of which the United States had knowledge on or before the date this Decree is  
24 lodged; and

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c. arising from the Incident for claims received by the Oil Spill Liability Trust Fund pursuant to Subchapter I of OPA, 33 U.S.C. §§ 2701-2719, on or before December 20, 2002.

39. Nothing in this Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The United States and Shell expressly reserve any and all rights, defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Incident against any person not a Party to this Consent Decree. The United States and Shell further expressly reserve any and all rights, defenses, claims, demands, and causes of action that the United States or Shell may have with respect to any matter, transaction or occurrence not related to the Incident.

40. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

41. This Consent Decree does not resolve, and the United States expressly reserves claims against Shell related to all other matters including, but not limited to, the following:

- a. claims based on a failure by Shell to meet a requirement of this Consent Decree;
- b. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- c. criminal liability;
- d. liability pursuant to regulations of the United States Department of Transportation, Research and Special Programs Administration, Office of Pipeline Safety or pursuant to the Pipeline Safety Act, 49 U.S.C. §§ 60101, *et seq.*;

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- 1 e. liability pursuant to Subchapter I of OPA, 33 U.S.C. §§ 2701-2719, for claims  
2 submitted to the Oil Spill Liability Trust Fund after December 20, 2002; and  
3 f. liability for any past, current, or future violation of federal or state law not  
4 resolved pursuant to Paragraph 38 of this Consent Decree.

5 42. In any subsequent administrative or judicial proceeding initiated by the United States for  
6 civil penalties or injunctive relief, Shell shall not assert, and may not maintain, any  
7 defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel,  
8 claim preclusion, issue preclusion, claim-splitting, or other defenses based upon any  
9 contention that the claims raised by the United States in the subsequent proceeding  
10 should have been brought in the instant case; provided, however, that nothing in this  
11 Paragraph affects the resolution of the civil claims resolved pursuant to Paragraph 38 of  
12 this Consent Decree.

13 43. Shell hereby covenants not to sue and agrees not to assert any claims related to the  
14 Incident, or response activities in connection with the Incident, against the United States  
15 pursuant to the CWA, OPA, or any other federal law, State law, or regulation including,  
16 but not limited to, any direct or indirect claim for reimbursement from the Oil Spill  
17 Liability Trust Fund, or pursuant to any other provision of law.

18 44. This Decree does not limit or otherwise adversely affect any rights of Shell to proceed  
19 against any person or entity other than the United States for contribution or any other  
20 cause of action arising from the Incident.

21 45. The United States, by consenting to the entry of this Consent Decree, does not warrant or  
22 aver in any manner that Shell's complete and satisfactory compliance with this Consent  
23 Decree will constitute or result in compliance with the CWA or any other federal law or  
24 regulation.

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46. Nothing in this Consent Decree shall limit or modify the authority of the United States Department of Transportation pursuant to the Pipeline Safety Act, 49 U.S.C. § 60101, *et seq.*, and the regulations promulgated thereunder including 49 C.F.R. §§ 190, 195. Nor shall anything in this Consent Decree limit or modify the provisions of such statute and regulations or orders issued thereunder.

**XV. NOTICES AND SUBMISSIONS**

47. Whenever, pursuant to the terms of this Consent Decree and Appendix, written notice is required to be given or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give written notice of a change. All notices and submissions shall be considered effective on receipt, unless otherwise provided.

**AS TO THE UNITED STATES:**

As to the United States Department of Justice:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
Post Office Box 7611  
Washington, D.C. 20044-7611  
DOJ #90-5-1-1-06967

As to the United States Environmental Protection Agency:

Regional Counsel  
United States Environmental Protection Agency  
Region X  
1200 Sixth Avenue  
Seattle, Washington 98101

Manager, Emergency Response Unit  
Office of Environmental Cleanup  
Region X  
United States Environmental Protection Agency  
1200 Sixth Avenue  
Mail Stop ECL-116  
Seattle, Washington 98101

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AS TO SHELL PIPELINE COMPANY, LP:

Lance Tolson - Senior Counsel  
Shell Oil Company - Legal Services/US  
1 Shell Plaza, OSP 1120  
Houston, Texas 77002

J. Gordon Arbuckle  
Patton Boggs LLP  
2550 M Street, N.W.  
Washington, D.C. 20037-1350

Richard W. Elliott  
Davis Wright Tremaine LLP  
10500 N.E. 8<sup>th</sup> Street  
1800 Bellevue Place  
Bellevue, Washington 98004-4300

**XVI. RECORD RETENTION/ACCESS TO INFORMATION**

48. In addition to complying with any record-keeping requirements pursuant to applicable law and regulations, regardless of any contrary corporate retention policy, Shell shall preserve and retain, during the pendency of this Consent Decree and for a minimum of three years after termination of this Consent Decree, all records, documents and information in the possession, custody, or control of Shell, or which come into their possession, custody, or control, that relate in any manner to compliance with this Consent Decree, including without limitation, documents and information from the National Pipeline Mapping System, final reports and correspondence, and data related to the work performed pursuant to Section VII (Other Relief) and the Appendix. Shell may at its election keep such documents on computer disks if Shell provides EPA or the Independent Monitoring Contractor, on request and free of charge, a copy of any computer software needed to review or print the documents.

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- 1 49. At any time prior to termination of this Consent Decree, and for three years thereafter,  
2 Shell shall provide to the United States, within 30 Days of the date of a request, all  
3 documents and information responsive to the request, within the possession, custody, or  
4 control of Shell or its contractors or agents, described in the preceding Paragraph.
- 5 50. Shell may assert business confidentiality claims covering part or all of the documents or  
6 information provided to the United States pursuant to this Consent Decree to the extent  
7 authorized by, and in accordance with, 40 C.F.R. Part 2. Documents or information that  
8 EPA determines to be confidential will be afforded the protection specified in 40 C.F.R.  
9 Part 2, Subpart B. If no claim of confidentiality accompanies documents or information  
10 when they are submitted to EPA, or if EPA has notified Shell that the documents or  
11 information are not confidential pursuant to applicable law, the public may be given  
12 access to such documents or information without further notice to Shell.
- 13 51. Shell may assert security-related claims covering part or all of the documents or  
14 information provided to the United States pursuant to this Consent Decree to the extent  
15 authorized by any applicable law or regulation. Documents or information that EPA  
16 determines to be security-related will be afforded the protection provided by applicable  
17 law or regulation. If no claim of security accompanies documents or information when  
18 they are submitted to EPA, or if EPA has notified Shell that the documents or  
19 information are not security-related pursuant to applicable law, the public may be given  
20 access to such documents or information without further notice to Shell. Nevertheless,  
21 no documents, reports, or other information specifically required to be created or  
22 generated pursuant to the requirements of the Consent Decree shall be withheld on the  
23 grounds that they are security-related.
- 24  
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52. Shell may assert that certain documents, records and other information are privileged pursuant to the attorney-client privilege or any other privilege recognized by federal law. Nevertheless, no documents, reports, or other information specifically required to be created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to the United States in redacted form to mask the privileged information only. If Shell asserts a privilege instead of providing documents, it shall provide the United States with the following:

- a. the title of the document, record, or information;
- b. the date of the document, record, or information;
- c. the name and title of the author of the document, record, or information;
- d. the name and title of each addressee and recipient;
- e. a description of the contents of the document, record, or information; and
- f. the privilege asserted by Shell.

53. Nothing in this Consent Decree shall limit the access and information-gathering authorities and rights of the United States pursuant to any federal law or regulation, including without limitation, related enforcement authorities pursuant to the CWA and OPA.

## **XVII. RETENTION OF JURISDICTION**

54. This Consent Decree shall be considered an enforceable judgment for purposes of post-judgment collection in accordance with the provisions of the Consent Decree, Rule 69 of the Federal Rules of Civil Procedure, and other applicable federal statutory authority.

1 55. This Court retains jurisdiction over both the subject matter of this Consent Decree and  
2 the Parties for the duration of the performance of the terms and provisions of this Consent  
3 Decree for the purpose of enabling either of the Parties to apply to this Court at any time  
4 for such further order, direction, and relief as may be necessary or appropriate for the  
5 construction or modification of this Consent Decree, or to effectuate or enforce  
6 compliance with its terms, or to resolve disputes in accordance with Section XIII  
7 (Dispute Resolution).

8 **XVIII. MODIFICATION**

9 56. Modifications to the schedules for completion of the requirements pursuant to  
10 Appendix A may be made without consent of the Court by written agreement between  
11 Shell and EPA. Except as provided in the preceding sentence, no material modifications  
12 shall be made to this Consent Decree without written notification to, and written approval  
13 by, the United States, Shell, and the Court. Minor modifications that do not materially  
14 alter Shell's obligations pursuant to this Consent Decree may be made without consent of  
15 the Court by written agreement between the Parties. Shell may consult with EPA  
16 regarding advances in knowledge or technology; and EPA and Shell may agree to  
17 modifications to this Decree to efficiently achieve the objectives of the Decree.  
18 Modifications to which EPA and Shell agree in accordance with the preceding sentence  
19 shall be deemed to be minor modifications.

20 **XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

21 57. This Consent Decree shall be lodged with the Court for a period of at least 30 Days for  
22 public notice and comment in accordance with 28 C.F.R. § 50.7. The United States  
23 reserves the right to withdraw or withhold its consent to the Consent Decree if the United  
24 States becomes aware of facts or considerations that indicate to the United States that the

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Consent Decree is inappropriate, improper, or inadequate. Shell agrees not to oppose entry of this Consent Decree or to challenge any provision of this Consent Decree unless the United States has notified Shell in writing that it no longer supports entry of the Consent Decree. Shell consents to entry of this Consent Decree without further notice.

58. If for any reason the Court declines to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement shall not be used as evidence in any litigation.

**XX. EFFECTIVE DATE**

59. The effective date of this Consent Decree is that date upon which it is entered by the Court.

**XXI. INTEGRATION/APPENDIX**

60. This Consent Decree, Appendix A (Other Relief), and Exhibits 1-6 to Appendix A, constitute the final, complete and exclusive Consent Decree and understanding between the Parties regarding the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following Appendix and Exhibits are attached to and incorporated into this Consent Decree:

“Appendix A” is the Other Relief referenced in Paragraph 12 of this Consent Decree.

“Exhibit 1 to Appendix A” is AGA Project PR-3-805 as defined in Subparagraph 1.b of Appendix A.

“Exhibit 2 to Appendix A” is API RP 1110 as defined in Subparagraph 1.e of Appendix A.

“Exhibit 3 to Appendix A” is API 1161 as defined in Subparagraph 1.f of Appendix A.

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1 “Exhibit 4 to Appendix A” is API RP 1130 as defined in Subparagraph 1.g of  
2 Appendix A.

3 “Exhibit 5 to Appendix A” is ASME B31.4-2002 as defined in Subparagraph 1.i of  
4 Appendix A.

5 “Exhibit 6 to Appendix A” is ASME B31G-1991 as defined in Subparagraph 1.j of  
6 Appendix A.

7 “Exhibit 7 to Appendix A” is NACE RP0169-2002 as defined in Subparagraph 1.x of  
8 Appendix A.

9 **XXII. TERMINATION**

10 61. Not earlier than 5 years after entry of this Consent Decree, this Decree shall be subject to  
11 termination upon motion by either Party after Shell fully satisfies all requirements of this  
12 Consent Decree, except those obligations required pursuant to Section XVI (Record  
13 Retention/Access to Information). At such time as Shell believes it has fulfilled all such  
14 requirements, Shell shall so certify to the United States. Not earlier than 30 Days after  
15 such certification, either Party may apply to the Court for termination of the Consent  
16 Decree. The obligations set forth in Section XIV (Effect of Settlement/Reservation of  
17 Rights) and Section XVI (Record Retention/Access to Information) shall survive  
18 termination of the Consent Decree as contractual obligations.

19 **XXIII. SIGNATORIES/SERVICE**

20 62. The Parties’ undersigned representatives certify that they are fully authorized to enter  
21 into the terms and conditions of this Consent Decree and to execute and legally bind such  
22 Party to this document.

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63. Shell shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service by mail on behalf of Shell with respect to all matters arising under or relating to this Consent Decree.

**XXIV. COSTS**

64. Each Party shall bear its own costs and attorneys' fees in the action resolved by this Consent Decree.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTIES enter into this Consent Decree relating to the Incident.

FOR THE UNITED STATES OF AMERICA

Date: \_\_\_\_\_

\_\_\_\_\_  
THOMAS L. SANSONETTI  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

\_\_\_\_\_  
WAYNE T. AULT  
Trial Attorney  
United States Department of Justice  
Environment and Natural Resources Division  
Environmental Enforcement Section  
Benjamin Franklin Station  
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6 FOR THE UNITED STATES ENVIRONMENTAL  
7 PROTECTION AGENCY  
8

9 \_\_\_\_\_  
10 JOHN PETER SUAREZ  
11 Assistant Administrator for  
12 Enforcement and Compliance Assurance  
13 United States Environmental Protection Agency

14 \_\_\_\_\_  
15 CHERYL T. ROSE  
16 Attorney-Advisor  
17 Office of Enforcement and Compliance Assurance  
18 United States Environmental Protection Agency  
19 Mail Code 2243A  
20 1200 Pennsylvania Avenue, N.W.  
21 Washington, D.C. 20460  
22  
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L. JOHN IANI  
Regional Administrator, Region X  
United States Environmental Protection Agency

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KEITH COHON  
Assistant Regional Counsel, Region X  
United States Environmental Protection Agency  
1200 Sixth Avenue  
Seattle, Washington 98101

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FOR SHELL PIPELINE COMPANY LP:

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NICK S. VERWOLF  
Davis Wright Tremaine LLP  
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Bellevue, Washington 98004-4300  
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Agent Authorized to Accept Service on Behalf of Shell Pipeline Company LP:

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Counsel for Shell Pipeline Company LP

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